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AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

05-1610 DRD

<b>United States District Court</b>		District	DISTRICT OF PUERTO RICO
Name of Movant	ARMANDO GARCIA-GARCIA	Prisoner No.	Case No.
		14932-069	97-076 (DRD)
Place of Confinement			
Federal Correctional Complex - USP, P.O. Box 1033, Coleman, Florida 33521-1033			
UNITED STATES OF AMERICA		V.	ARMANDO GARCIA-GARCIA (name under which convicted)
<b>MOTION</b>			
1. Name and location of court which entered the judgment of conviction under attack <u>United States District Court for the District of Puerto Rico, San Juan, Puerto Rico</u>			
2. Date of judgment of conviction <u>June 25, 1999</u>			
3. Length of sentence <u>Life imprisonment</u>			
4. Nature of offense involved (all counts) <u>Conspiracy to distribute multi-kilogram quantities of various controlled substances, that is to say, in excess of 5 kilograms of cocaine; in excess of 5 kilograms of heroin; in excess of 5 kilograms of cocaine base; and in excess of 100 kilograms of marijuana, in violation of 21 U.S.C. §§ 841 &amp; 846.</u>			
5. What was your plea? (Check one)			
(a) Not guilty <input checked="" type="checkbox"/>			
(b) Guilty <input type="checkbox"/>			
(c) Nolo contendere <input type="checkbox"/>			
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:			
<u>Not Applicable (trial by jury)</u>			
6. If you pleaded not guilty, what kind of trial did you have? (Check one)			
(a) Jury <input checked="" type="checkbox"/>			
(b) Judge only <input type="checkbox"/>			
7. Did you testify at the trial?			
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
8. Did you appeal from the judgment of conviction?			
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			

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9. If you did appeal, answer the following:

(a) Name of court United States Court of Appeals for the First Circuit

(b) Result Judgment of Conviction Affirmed

(c) Date of result November 20, 2003 / Rehearing Denied January 22, 2004

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court United States Court of Appeals for the First Circuit

(2) Nature of proceeding Motion to Recall Mandate

(3) Grounds raised Motioning First Circuit Court of Appeals to recall

Its mandate in light of intervening change of law, to wit

Sixth Amendment Jurisprudence founded upon the matter of

Blakely v. Washington, 542 U.S. \_\_\_\_ (2004).

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result Motion to Recall Mandate denied

(6) Date of result December 10, 2004

(b) As to any second petition, application or motion give the same information:

(1) Name of court Supreme Court of the United States

(2) Nature of proceeding Petition for Writ of Certiorari

(3) Grounds raised Sixth Amendment Jurisprudence founded upon the matter  
of Blakely v. Washington, 542 U.S. \_\_\_\_ (2004).

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒(5) Result Petition for Writ of Certiorari denied(6) Date of result February 28, 2005

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐(2) Second petition, etc. Yes ☐ No ☐ N/A

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

Not Applicable

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Sentencing Court erred in assessing criminal history points, and  
counsel was ineffective for failing to object to and appeal same.

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

The sentencing court erred in assessing criminal history points against  
the Petitioner, pursuant to U.S.S.G. §4A1.1(a), §4A1.1(d), and §4A1.1(e),  
for intertwined conduct relevant the instant offense of conviction  
underlying; and counsel was ineffective for failing to object to same  
and/or litigate same on direct appeal, grossly violative of Petitioner  
Garcia-Garcia's Sixth Amendment right under the U.S. Constitution.

B. Ground two: Sentencing Court erred in violating 18 USC §3552(c), and  
counsel was ineffective for failing to object to and appeal same.

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

The sentencing court erred in failing to state in open court, at  
sentencing, the reasons for its imposition of the particular sentence  
against Petitioner Garcia-Garcia, as required by Title 18 United States  
Code, Section 3553(c), and counsel was ineffective for failing to object  
to, argue, and litigate same on Petitioner's direct appeal.

C. Ground three: Sentencing Court erred in Its drug quantity determination,  
and counsel was ineffective for failing to object to and appeal same.

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

The sentencing court erred in determining the drug quantity attributable  
to Petitioner's offense conduct for sentencing purposes without making  
an individualized finding as to drug amount and drug type attributable  
to and foreseeable by Petitioner, thus shifting the burden of the drug  
quantity attributable to the conspiracy as a whole against Petitioner  
for guideline sentencing purposes, and counsel was ineffective in failing  
to object to same, and litigate same on Petitioner's appeal.

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- D. Ground four: Petitioner's sentence was imposed in violation of the Sixth Amendment, and counsel was ineffective if failing to object to/appeal same.

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

Petitioner's sentence was imposed in violation of the Sixth Amendment of the United States Constitution, where Petitioner's assessed sentencing range under the sentencing guidelines was increased beyond the maximum he would have received if punished according to the facts reflected in the jury verdict alone, based upon the sentencing court's additional judge-made findings under the erred preponderance of the evidence standard of review, rather than the appropriate beyond a reasonable doubt standard of review, and counsel was ineffective for failing to adequately raise and argue same within Petitioner's appellate contentions.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

Neither ground listed in 12A, B, C, and D were previously raised on account of Petitioner Garcia-Garcia's trial/appellate counsel's failure to present these grounds to the sentencing court via objection and to the appellate court via the appellate brief counsel filed on behalf of Petitioner Garcia-Garcia.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?  
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Jose Romo-Matienzo, Esq., 54 Coll and Toste Street, 286 Baldrich, Hato Rey, Puerto Rico 00918

(b) At arraignment and plea Jose Romo-Matienzo, Esq., 54 Coll and Toste Street, 286 Baldrich, Hato Rey, Puerto Rico 00918

(c) At trial Jose Romo-Matienzo, Esq., 54 Coll and Toste Street, 286 Baldrich, Hato Rey, Puerto Rico 00918

(d) At sentencing Jose Romo-Matienzo, Esq., 54 Coll and Toste Street, 286 Baldrich, Hato Rey, Puerto Rico 00918

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(e) On appeal Rachel Brill, Esq., Mercantil Plaza Building, Suite 1113, Ponde De Leon Avenue, Hato Rey, Puerto Rico 00918

(f) In any post-conviction proceeding Not Applicable

(g) On appeal from any adverse ruling in a post-conviction proceeding Not Applicable

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

Not Applicable

(b) Give date and length of the above sentence: Not Applicable

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Armando Garcia Garcia  
Armando Garcia-Garcia, Petitioner  
Register No. 14932-069  
Federal Correctional Complex - USP  
P.O. Box 1033  
Coleman, Florida 33521-1033

I declare under penalty of perjury that the foregoing is true and correct. Executed on

5-22-2005

(date)

Armando Garcia Garcia  
Armando Garcia-Garcia, Petitioner